IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.1033 OF 2007
IN
COMPANY PETITION NO.780 OF 2007

Vijay Arora & Anr. .. Applicants.
Vs.
Eastern International
Hotels Ltd. .. Respondent.

Mr.Z.T.Andhyarujina i/b S.K.Srivastava for the applicants.
Mr.Janak Dwarkadas with Cyrux Ardeshir i/b Wadia Gandhi & Co. for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 1ST NOVEMBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. Mr.Andhyarujina, learned counsel for the applicants at the outset submitted that he has instructions to press only prayer clauses (b) and (c) in the application. Prayer clauses (b) and (c) read thus:

> "(b) That pending the hearing and final disposal of the above Petition, the Respondent Company be restrained by servants, agents, and provisional officers from entering into any agreement/arrangement or contract to hand over the management and possession of the said Hotel Eastern International (formerly known as Holiday Inn) at Juhu to any third party.
>
> (c) That pending the hearing and final disposal of the above Petition, this Hon'ble Court be pleased to restrain the Respondent Company by an order and injunction of this Hon'ble Court from selling, encumbering, creating third party right or interest or parting with the possession or management of

> assets of the Respondent Company including the said "Eastern International Hotels" (formerly known as "Holiday Inn"), situate at Juhu, Mumbai and Five Star Hotel, known as "Majorda Beach Resort", situate at Goa to any third party in any manner whatsoever."

3. The main grievance made by the learned counsel for the petitioner is that the respondent-company did not file Annual Report, Balance Sheet and Profit and Loss Account for the last six years and the respondent-company has been delisted from the Bombay Stock Exchange and a public notice has been issued in this regard on 2.7.2004 in the Financial Express. It is against this backdrop he submits that the respondent-company is likely to enter into management contract and if they do so the rights of the applicants as also of the other shareholders are likely to be affected adversely. I perused the affidavit in support of the application so also the reply and the rejoinder filed by the parties. The applicants before the Court are Vijay Arora and Shobha Arora, who belong to R.T.Arora Group, which holds 62,480 shares of the respondent-company. The total number of equity shares of the respondent-company are 17,63,340. There is no dispute that the applicants hold hardly 600 shares each out of 62,480 shares held by R.T.Arora Group. This court is informed that one Amrish Arora, who also belongs to R.T.Arora Group,

holds 98% of the shares out of 62,480 shares. Amrish Arora had an occasion to state on affidavit dated 19th July, 2007, filed before the Arbitral Tribunal constituted in pursuance of the orders passed by this court, as follows:

> "4. I say and submit that the Respondents are purposely avoiding to produce the copy of the MOU/Agreement executed between the 1st Respondent Company and/or with Accor/Novotel before this Hon'ble Tribunal. I say and submit that Accor/Novotel is one of the leading chains of Hotels/Hotel Management Chains in the world and if management of Eastern International Hotels Ltd. at Juhu of the 1st Respondent Company is taken over by Accor/Novotel then the value of the shares of the 1st Respondent Company will shoot up immensely. I say and submit that the turnover, profit and good will of the properties of the 1st Respondent will also shoot up immensely as room rates go up substantially. The said Agreement/MOU entered into between the 1st Respondent Company with Accor/Novotel has been purposely suppressed so as to prevent this Hon'ble Tribunal to arrive at an fair value of the shares of the 1st Respondent Company."

4. It appears and has not been controverted that the respondent-company has approximately 700 employees/contract labour for the management of the hotel. The hotel is a going concern against which a winding up petition has been filed by the applicants. In their affidavit-in-reply dated 11.10.2007, the Vice President has stated that the company is the solvent and is paying its debts in normal course of business as and when such debt arise. It has also been stated that due to the nature of the hospitality

industry and the level of professionalism, expertise, knowledge and experience required in the management and operations of a hotel, it is not uncommon, and in fact a norm in the hospitality industry, to appoint professional management having the necessary expertise, experience and international brand recognition to operate and manage a hotel such as the Hotels owned by the respondent-company. Considering the economic growth of the country and role being played by the hospitality and tourism industry I do find substance in what has been stated on affidavit. The company in paragraph 7(v)(d) of the affidavit has stated that there would at no time be a transfer of title and/or possession of the hotel or the properties on which the hotel is situated in favour of the manager or any third party and the owner would continue to remain the legal and beneficial owner of the hotels and properties on which the hotel is situated, as the case may be. In paragraph 9(xiii) the company has stated thus:

> "(xiii) the Respondent Company reiterates what is set out above, and denies that entering into a management agreement by the Respondent Company with an internationally recognized hospitality group for the professional management of the Hotel(s) would result in siphoning off of monies due to the Respondent Company by the promoter group. The management contract, if and when entered into by the Respondent Company with the Accor Group, would appoint the Accor Group as a mere manager of the hotel rendering managerial services to the Respondent Company

> in relation to the Hotel(s). There would be no transfer of title and/or possession of the properties of the Respondent Company in favour of such manager. The management contract would be executed between the Respondent Company as the owner of the Hotels, who would be entitled to receive all the income accrued to the Hotels in the ordinary course of its business and Accor would merely be paid management fees on an annual basis for services rendered."

5. Insofar as the allegation of not filing of the returns made in paragraph 2 of the affidavit in support of the application, the company in reply has stated that both the promoter groups are adopting steps and are in the process of making compliance as required by the respondent-company. Considering the overall facts and circumstances of the case and the statements made by the respondent-company in their reply affidavit I am not inclined to grant prayers in the application hence the application is rejected.

(D.B.BHOSALE, J.)